

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11034 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES  
Yes.
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO
5. Whether it is to be circulated to the Civil Judge? No

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MAGHABHAI HANSABHAI MARWADI

Versus

COMMISSIONER OF POLICE AHMEDABAD

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Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE AGP for Respondent Nos. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/09/1999

ORAL JUDGEMENT

1. Heard learned advocate Ms. D.R. Kachhavah for the petitioner and learned A.G.P. K.T. Dave for respondent Nos. 1 to 3.

2. The petitioner has filed the present petition under Article 226 of the Constitution of India with a prayer to claim appropriate Writ or Direction to quash and set aside the detention order dtd. 7/10/98, passed

by the respondent No. 1 - Commissioner of Police, Ahmedabad City, against the petitioner in exercise of powers conferred under Sec. 3 (1) of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short) and to set the petitioner at liberty forthwith.

3. That vide order dtd. 7/10/98, the respondent NO.

1 - Commissioner of Police, in exercise of powers conferred under Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short), held that in order to prevent the petitioner from continuing his anti-social activities which is likely to adversely affect the maintenance of public order, it is necessary to detain the petitioner as he is subjectively satisfied on the basis of material produced before him.

The petitioner is supplied with grounds of detention dtd. 7/10/98, as required under Sec. 9 (1) of PASA. That the perusal of the said grounds, indicate that on 5/10/98, an offence was registered at Navrangpura Police Station against the petitioner - detenu in respect to offence made punishable under provisions of Bombay Prohibition Act and 938 liters of country-made liquor was seized. It is alleged in the F.I.R. of the said crime that the petitioner along with his accomplice one Motali-bai - wife of Jetha Deva and Ganesh Ratna, were apprehended on the spot, near the residence of Bai-Motali by Police Inspector of Navrangpura Police Station who raided the premises, on receipt of information. That on registration of crime, investigation commenced and the matter is pending.

4. Over and above, the above stated incident two witnesses on assurance of anonymity, have supplied information to the fact that the petitioner used to illegally transport country-made liquor and on 28/9/98, the petitioner - detenu asked one of the witness to provide his vehicle and on his refusal, the petitioner detenu got enraged and assaulted the witnesses alongwith his accomplice. That as the witnesses raised alarm passers-by gathered there and as such the petitioner detenu rushed with open knife, hence, the persons gathered there started running, helter-skelter and dispersed. Similarly on 1/10/98, the witness was asked by the petitioner detenu to provide storage of the country-made liquor brought by him and on refusal of the witness, the petitioner - detenu, got enraged and dragged the witness to the main road beating with fist blows and kicks. When the passers by gathered there, the petitioner detenu rushed to them with open knife and

thereby persons gathered there started running helter-skelter scatter and dispersed.

5. On the basis of the above stated facts, the Police Commissioner, Ahmedabad City, held that the petitioner is a bootlegger within the meaning of Sec. 2 (b) of PASA and resort to the provisions of general Law are not sufficient to prevent the petitioner from continuing his anti-social activities, which is likely to affect adversely to the maintenance of public order. The respondent No. 1 was also satisfied that the witnesses who have given information against the petitioner detenu are afraid of him and for their safety, it is necessary to claim privilege to keep their names and addresses anonymous, under Sec. 9 (2) of PASA. The respondent NO. 1 has further considered the fact that supply of country-made liquor by the petitioner in the society has proved to be injurious to the health of general public and thereby except detaining the petitioner under Sec. 3 (1) of PASA, no other course is available to the authority to prevent the petitioner from continuing his anti-social activity, and hence the impugned order is passed.

6. Learned advocate appearing for the petitioner, assailed the impugned order contending that the respondent has failed to provide report of Chemical Analyzer in respect to material alleged to be country-made liquor seized under the Crime Register NO. 5061/98, registered at Navrangpura Police Station, to the petitioner. It is also contended that vide written representation dtd. 31/7/99, the petitioner - detenu specifically claimed such report as the same was not supplied, and thereby the petitioner detenu was prevented from making effective representation against the preventive detention which amounts to violation of his fundamental right guaranteed under Article 22 (5) of the Constitution and as such the continued detention of the petitioner has become illegal.

7. In order to appreciate the contention, it is necessary to construe the facts that the petitioner has lodged the present petition on 24th December, 1998 and vide para 11, he has raised the contention regarding the claim of copy of the report of the Chemical Analyzer. That the respondent NO. 1 has filed Affidavit-in-reply dtd. 26th March, 1999, wherein in para 10, it has been stated that the report of Chemical Analyzer, has not been relied on as document while formulating the grounds of detention and as such the petitioner is not entitled to claim the copy of the said document. That the respondent

NO. 1 has filed additional affidavit dtd. 18th September, 1999, which is produced on record vide page 32 to 36 of the compilation, wherein in para 3, it has been stated that the representation dtd. 31/7/98, made through an advocate by the petitioner was received on 3rd August, 1999 and vide order dtd. 4th August, 1999, the petitioner detenu was supplied with the document (report of the Chemical Analyzer), which was demanded by the representation. That in view of the said fact, the contention urged on behalf of the petitioner - detenu that non-supply of document prevented the petitioner detenu from making effective representation cannot be said to have any merit and as such, deserves to be rejected.

8. Learned advocate appearing for the petitioner has also contended that the Detaining Authority has failed to supply the information regarding the accomplice of the petitioner referred to by the witnesses, who have given information against the petitioner. The contention has no substance because, the witnesses who supplied the information to the authority have only described the accomplice who accompanied the petitioner at the time of alleged assault and as such no information or material about the said accomplice had formed the part of a material construed by the Detaining Authority while passing the impugned order, thus, the second contention urged on behalf of the petitioner also fails.

9. It is further submitted by the learned advocate appearing on behalf of the petitioner that the grounds of detention disclose only one incident which is an offences registered before the Navrangpura Police Station for the offence made punishable under Bombay Prohibition Act. The said offence registered on 5th October, 1998 and the petitioner - detenu was arrested and was sent to judicial custody in respect to the said offence. That the impugned order is passed on 7th October, 1998, as such on the date of passing of the impugned order, the petitioner was in the Judicial Custody. This fact itself suggests that the Detaining Authority has reached to the subjective satisfaction without proper application of mind. That if the petitioner has remained in judicial custody, there could not be any likelihood of continuing his illegal activity as alleged in the impugned order. The contention could hardly be merited in the context of provisions made under Sub-Section 4 of Sec. 3 of PASA read with explanation. The explanation of Sub Section 4 provides enlarged meaning to the public order likely to be affected by alleged anti-social activity. That the petitioner was arrested for the offences, some of which

are bailable and looking to the punishment prescribed for the same, grant of bail to the petitioner cannot be ruled out. Under such circumstances, subjective satisfaction reached by the Detaining Authority, on the basis of said material cannot be said to be without application of proper mind.

10. Learned advocate for the petitioner has lastly contended that the material produced on record does not disclose the gravity and magnitude of alleged anti-social activity of such incident which could adversely affect the maintenance of public order. The said submission has also no merit because what is required to be considered in such cases is whether the material produced before the Detaining Authority could lead to a reasonable inference as regards the adverse effect on maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not, is not for the Court to decide by applying an objective test, as held in the matter of Kanuji Jala Vs. State of Gujarat and others, reported vide 1999 S.C.C. (Cri.) page 599.

11. On the basis of abovestated discussion, all the contentions as urged on behalf of the petitioner fails to satisfy that the impugned order is illegal, unjust or arbitrary, hence the petition fails and stands disposed of as rejected.

Rule is discharged.

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